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NO. ~~706~~ 37.

Supreme Court of the United States.

OCTOBER TERM, 1904.

THE NATIONAL COTTON OIL COMPANY ET AL., PLAINTIFFS IN ERROR,

VS.

THE STATE OF TEXAS, DEFENDANT IN ERROR.

IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE SECOND SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

BRIEF OF C. K. BELL, ATTORNEY GENERAL OF THE STATE OF TEXAS.

VON BOECKMANN-JONES COMPANY, PRINTERS, AUSTIN, TEXAS.

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This was a suit instituted in the name and on behalf of the State of Texas by the Attorney General thereof against the National Cotton Oil Company, a foreign corporation, to forfeit the license granted to the defendant, authorizing it to transact business in the State of Texas, for alleged violation of the anti-trust statutes of that State.

The defendant did not deny the facts alleged, but demurred to the petition upon the grounds expressed in several different ways, but all of which were based upon the theory that the anti-trust laws of the State of Texas were void, because they were in contravention of the Constitution of the United States, in that by the terms of the laws they did not apply to agricultural products or live stock while in the hands of the producer or raiser.

The demurrers having been overruled by the trial court, the defendant declined to further answer, and judgment was rendered in favor of the State of Texas, in accordance with the prayer of its petition, forfeiting, revoking and canceling the permit which had been granted the defendant, authorizing it to transact business in the State of Texas, and enjoining

it from transacting any business in the State of Texas except such business as constituted interstate commerce. From this judgment the defendant appealed to the Court of Civil Appeals of the Second Supreme Judicial District of Texas by which court the judgment rendered in the District Court of Travis county was affirmed. A writ of error was denied by the Supreme Court of the State. The writ of error in this case was then sued out from the Supreme Court of the United States to the Court of Civil Appeals of the Second Supreme Judicial District of the State of Texas.

There had been, at the time of the commission of the acts complained of, three anti-trust statutes passed by the Legislature of the State of Texas; one in 1889, another in 1895, and the third in 1899. By the provisions of each of said laws the acts committed by the defendants were declared to be illegal, and a part of the penalty imposed by each of the laws for the commission of the acts mentioned was a forfeiture of its charter if they were committed by a domestic corporation, and of the permit under which it was engaged in transacting business in the State of Texas if they were committed by a foreign corporation.

It had been held by the Supreme Court of the State of Texas that the laws of 1889 and 1895 were valid and constitutional enactments. But after the decision of this honorable court in the case of Connolly vs. Union Sewer Pipe Co., 184 U. S., 540, the decisions theretofore rendered by the appellate courts of the State of Texas, upholding the laws mentioned so far as it was sought under them to collect penalties, were overruled and the laws held to be nugatory when penalties were sought to be collected for a violation of their provisions. The law of 1899 contained no exemption in favor of any class, and this law has been held by the Supreme Court of the State of Texas, in the case of The State of Texas vs. Laredo Ice Co., 96 Texas, 461, to be a valid and constitutional enactment.

The questions in this case are, first, is the anti-trust act of the Legislature of the State of Texas of 1899 a constitutional enactment; and, second, conceding that the acts of 1889 and 1895 are not constitutional to the extent of warranting the collection of penalties for a violation of their provisions, is it within the power of the courts to forfeit the permit which authorizes a foreign corporation to transact business in the State of Texas for committing the acts which by such statutes they are prohibited from committing under penalty of forfeiting such permits?

The first question has been answered by the Supreme Court of the State of Texas in the case of The State of Texas vs. Laredo Ice Co., 96 Texas, 461, in the affirmative, and nothing can be added, I think, to the strength of the reasoning of the court in that case, and I deem it only

necessary to call attention to it, it being the rule of this honorable court to follow the interpretation placed upon a statute of a State by its highest court.

As to the second question, I submit that the identical proposition presented by it has been decided by this court in the case of the Waters-Pierce Oil Co. vs. The State of Texas, 177 U. S., 28, and by the Court of Civil Appeals of the State of Texas in the case of Waters-Pierce Oil Co. vs. The State of Texas, 19 Civ. App., 1, and by the Supreme Court of the State of Texas in the case of The State of Texas vs. Shippers' Compress and Warehouse Co., 95 Texas, 603.

It is, therefore, respectfully submitted that the judgment of the Court of Civil Appeals of Texas should be affirmed.

C. K. BELL,
Attorney General.